

## Confidential Memorandum—Nonconforming Assets

To: Director, Licensing Policy & Systems

From: Initial Reviewer

Date:

Re: Name (converting institution), CAIS Control Number  
Nonconforming Assets

### Recommendation:

The recommendation should briefly explain the nature of the nonconforming asset. Include any special conditions considered necessary for the specific asset(s) in question. For example:

Assuming that the underlying application will be approved, I recommend that the bank's request to retain ownership of AMR common stock be approved subject to the following special condition:

The bank may retain shares of AMR common stock subject to its representation that if such asset is not conforming it will divest of the nonconforming asset within *(insert time period within two years)* of the consummation of the conversion, unless within that time period, the OCC determines that these assets are permissible investments.

### Applicant Information:

Provide a brief description of the converting bank, including asset size, CAMELS ratings, BHC affiliation and BOPEC ratings, any significant supervisory issues in evidence.

### Description of the asset(s):

Examples: 200,000 shares AMR [parent of American Airlines] common stock, market value \$14.8 million as of (insert date). The bank's position is less than 0.02 percent of AMR's outstanding common shares.

OR

Investment in name op sub (\$750,000 as of date ), an insurance agency specializing in casualty insurance. It also engages to a limited degree in life and property insurance. Name is the fourth largest casualty insurer in Alaska, having an estimated 10 percent of the market. It was established in 18xx and acquired by the bank in 1926. It has an unbroken stream of profitable years during the 20th century. It is rated AAA by SJW Assoc, a renowned insurance company rating service. Last two examination reports of the Alaskan Insurance Commission (earliest one dated as of Feb-90) disclose no substantive concerns. The management team is experienced and operates independently from the bank. The firm's external auditor is XYZ, and this audit is conducted separately from that of the bank.

**Effect on the applicant:**

Describe the size and scope of the asset or underlying activity, influence on applicant's overall performance, and any particular unusual risks that the asset or underlying activity presents. Briefly discuss the impact that retention of the asset will have on the bank. For example:

Market value of \$14.8 million is negligible given the bank's total assets of \$1.85 billion. Furthermore, the annual income from dividends (approx. \$1.0 million) is a small amount when compared with the bank's average net income for the last five fiscal years (\$172 million). There are no unusual risks or supervisory issues presented by the stock. Based on history, possible declines in market value should not threaten the bank's equity capital. The largest decline in the stock's value in the past decade represents less than two percent of equity capital.

**Supervision:**

After consulting with the Supervisory Office, indicate how supervision of the asset or underlying activity will be addressed in the proposed supervisory strategy for the bank. Also, indicate whether or not existing examination procedures are adequate for supervision of the asset or underlying activity or how it will be examined.

**Position(s) of Other OCC Staff:**

Briefly discuss pertinent comments received from other OCC staff during analysis of the application. For example:

District counsel confirmed that the shares of AMR are permissible holdings for a state-chartered bank. The district accountant verified that the bank's accounting of the asset treatment conforms to call report instructions.

**Summary of Comments Received:**

Briefly discuss any public or other comments received which relate to the specific asset(s).

## Approval/Conditional Approval Letter

[OCC Logo]

Name of Representative  
Name of Institution  
Address  
City, State, ZIP Code

Re: Application Description, CAIS Control Number

Dear Mr./Mrs. (Name):

The Comptroller of the Currency (OCC) has reviewed your request, dated (date), to convert (name of institution) to a national bank. After a thorough review of all information available, including the representations and commitments made in the application and the (*name of institution's*) representatives, we find that your request meets the requirements for approval to convert to a national banking association pursuant to [*for state banks include: 12 USC 35 and*] 12 CFR 5.24 as follows:

Title: (*Name of national bank*)

Location: (*Address*)

*This approval is based in part upon the institution's representation that, prior to conversion, the capital structure will be realigned to comply with the minimum capital requirements of 12 USC 35, 36, 51, 52, and 371d to the extent applicable.*

### **[For Operating Subsidiary]**

*The OCC approves (insert name of bank)'s plans to (continue, expand, or perform) the following activity operating subsidiary (briefly describe the activity and include the name provided by the bank in the filing):*

*This letter is approval to retain the nonconforming asset (insert description). Following consummation and for a period of two years, (insert name of institution) is permitted to retain its investment in the (name of sub or describe activity). This investment must be terminated within the two-year period unless, within that time period, the OCC determines that this investment is permissible. [Or (name of institution) must divest of its investment in (insert description of asset)].*

### **[For Branches]**

*This letter also constitutes official OCC authorization to operate the following branches:*

OCC Branch Number  
Branch Popular Name  
Exact Location (street address)  
City, State, ZIP Code

*Please retain this letter as the official (type of branch) authorization. If the branch is closed, a 90-day advance notice of the proposed branch closing must be submitted to the OCC pursuant to 12 USC 1831r-1. Following the expiration of the 90-day*

*notification period, this authorization must be surrendered. If the branch is sold, the branch authorization should be surrendered to the OCC.*

***[For Fiduciary Powers]***

*The OCC also has (approved/conditionally approved) your proposal to conduct fiduciary powers pursuant to 12 USC 92a. This approval constitutes a permit to conduct the fiduciary powers requested in your application [12 CFR 5.26(e)(4)]. (If limited powers, add:) Per your application, the fiduciary powers are limited to: (insert the list of fiduciary powers requested.)*

***[If applicable]*** *The OCC has no objection to (insert name) serving as your trust officer. The OCC must approve any trust management change the bank makes prior to commencing fiduciary powers.*

*The board of directors should provide for the establishment and administration of the trust department (or fiduciary operation) either through the adoption of amendments to the bylaws or by appropriate resolutions. You will note that 12 CFR 9.4 places responsibility on the board of directors for the proper exercise of the bank's fiduciary powers. However, the board may decide whether it shall supervise the administration of all such powers directly or assign any function related to such powers to any director, officer, employee, or committee.*

*The board should also provide:*

- *A proper delineation of duties for trust officer(s) and committee(s).*
- *The pledging of securities to secure trust funds on deposit in the bank as required by 12 CFR 9.10(b).*
- *The designation of the officers or employees responsible for custody of the trust investments in conformity with 12 CFR 9.13(a).*
- *The deposit of securities with state authorities where required by local law, according to 12 CFR 9.14.*

*The establishment and administration of the trust department may appear in the bylaws or in the board resolutions, or partly in the bylaws and partly in the resolutions. After adoption, a copy of those provisions should be furnished to the trust officer(s) for guidance.*

*Under separate cover, the OCC Communications Division will mail to you the series of Comptroller's Handbooks for Fiduciary Activities. The trust officers and staff should become thoroughly familiar with "Fiduciary Activities of National Banks" at 12 CFR 9 (copy enclosed).*

*The trust activities should begin within 18 months of this approval, unless we grant an extension. You may begin exercising fiduciary powers simultaneously with your conversion to a national bank. The bank should notify this office in writing within 10 days after commencement of trust activities. If the bank decides to surrender its fiduciary powers, it should notify the OCC in accordance with 12 CFR 9.17(a).*

***[For Bank Premises]***

*Pursuant to 12 CFR 5.37, the OCC has approved your request for an additional investment in bank premises, including leasehold improvements, resulting in a total investment in bank premises in an amount not to exceed \$(amount). The bank's investment in bank premises may not be increased above this amount without first obtaining OCC approval. This amount remains effective until the OCC notifies the bank otherwise. Approval is not required for items that will be expensed in conjunction with the purchase of bank buildings.*

*All bank premises and fixed assets should be depreciated annually on the bank's books in accordance with generally accepted accounting principles, and all leases should be accounted for in accordance with Financial Accounting Standards Board Statement No. 13.*

*You are reminded that the following (insert as appropriate) are required before the effective date of the conversion:*

- 1. The institution must purchase adequate fidelity bond coverage in accordance with 12 CFR 7.2013, which lists four factors the directors should consider to determine adequacy.*
- 2. If a director, officer, employee, or principal shareholder of the bank (including an entity in which such person owns an interest of 10 percent or more) is involved in the sale of credit life insurance to loan customers, the bank should ensure compliance with 12 CFR 2, which among other things, prohibits a covered person from retaining commissions or other income from the sale of credit life insurance connected with any loan the bank makes.*
- 3. [Applicable for all converting institutions, except those meeting the definition of noncomplex community bank. Specific supervisory conditions should still be used if the particular circumstances of the applicant warrant.]. The board of directors must adopt and have in place policies, practices, and procedures to ensure the safe and sound operation of the bank. The board also must review those policies, practices, and procedures continually and ensure bank compliance with them. We are enclosing the minimum policies and procedures applicable to national banks.*
- 4. (Name of institution) has represented that it intends to maintain its membership in the Federal Home Loan Bank (FHLB) system. If, at any time, (name of institution) ceases to be a member of the FHLB system, it must use its best efforts, including contacting the appropriate FHLB and/or the Federal Housing Finance Board, to dispose of any stock in the FHLB. The OCC will consider this stock a nonconforming asset for any period that (name of institution) is not a member of the FHLB system.*
- 5. The converting institution must obtain any other required regulatory approvals.*
- 6. The converting institution must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion.*

***[For conditional approvals only.]***

*(List conditions.)*

*Please be advised that all conditions of this approval shall be deemed to be "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818(b)(1).*

**[As applicable.]** *The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.*

*If the conversion is not consummated within six months from the date of the decision, approval will be withdrawn. The OCC is opposed to granting extensions, except under the most extenuating circumstances and expects the conversion to occur as soon as possible.*

*Upon conversion, please submit a letter certifying that you have completed all steps required to convert to a national banking association (sample enclosed). If you have any questions, please contact (name) at (telephone number) (FAX number).*

*Sincerely,*

*□Signature□*

*Name and Title*

*Enclosures: Conversion Completed Certification Sample Letter  
Minimum Policies and Procedures  
12 CFR 9*

## ***Letter Issuing Charter***

*Date*

*Name of Representative*

*Name of Institution*

*Address*

*City, State, ZIP Code*

*Re: Application Description, CAIS Control Number*

*Dear Mr./Mrs. (Name):*

*The Comptroller of the Currency (OCC) has reviewed and found no exception to the documents submitted by your institution to complete the conversion process.*

*Your charter certificate is enclosed. You are authorized to commence business on (date).*

*Should you have any questions, contact (name of portfolio manager) at (telephone number), who will be responsible for the ongoing supervision of your institution.*

*Sincerely,*

*- Signature -*

*Name and Title*

*Enclosure*

*cc: Portfolio Manager  
Official File  
Congressional Liaison (if applicable)*